

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

ROBINSON’S CATERING INC.)	
D/B/A BRANCATO’S CATERING,)	
)	
Plaintiff,)	
)	
v.)	Case No. 4:21-CV-00749
)	
BRANCATO’S LLC, MARKET)	
)	
Defendant.)	

JOINT PROPOSED SCHEDULING AND DISCOVERY PLAN

1. **Rule 16(b) and 26(f) Conference.** Pursuant to Fed. R. Civ. P. 16(b) and 26(f) the parties met and conferred on **January 13, 2021**. The parties hereby submit their joint proposed scheduling order and discovery plan.
2. **Initial Disclosures:** The Parties will exchange Fed. R. Civ. P. 26(a)(1) initial disclosures no later than January 27, 2021.
3. **Discovery plan:**
 - a. Plaintiff anticipates that discovery will be needed on the following subjects:
 - i. Plaintiff’s selection, adoption, and use of the Brancato’s Mark
 - ii. Plaintiff’s marketing and advertising for catering and food preparation services using the Brancato’s mark
 - iii. Defendant’s selection, adoption, and use of the names Brancato’s Market, Joe Brancato’s Italian Sausage & Market, and any other names that incorporate “Brancato’s” in connection with its planned business(es) that will offer catering and food preparation services (“Accused Marks”)
 - iv. Defendant’s marketing and advertising of catering and food preparation services using the Accused Marks
 - v. Defendant’s knowledge of Plaintiff and its marks.
 - vi. Trademark searches, internet queries, or other due diligence conducted by Defendant into the Accused Marks prior to using the Accused Marks
 - vii. Instances of actual confusion between Plaintiff and Defendant
 - viii. Defendant’s sales of goods or services under or in connection with the Accused Marks
 - b. Defendant anticipates that discovery may be needed on the following subjects:
 - i. Plaintiff’s history of operating as Brancato’s Catering beginning on or around 1999 while Defendant operated Brancato’s Market;
 - ii. The events surrounding Defendant’s decision and plan to re-open as Brancato’s Market;

- iii. The events surrounding Defendant's selection and intended use of the business name Brancato's Market, Joe Brancato's Italian Sausage & Market, and its ultimate selection and use of The Italian Sausage Company;
 - iv. The scope of services to be provided by the re-opened business, now known as The Italian Sausage Company;
 - v. Plaintiff's filing of an application for federal trademark registration;
 - vi. The substance and facts surrounding Plaintiff's claims of confusion between Brancato's Catering and Brancato's Market;
- c. The Parties anticipate submitting an agreed Protective Order for the Court's approval and subsequent entry. Pursuant to Fed. R. Civ. P. 26(f)(3)(c), the parties addressed E-discovery. There are potential issues for E-discovery but none that are known at this time. The parties will follow up with the Court if additional orders become necessary.
- d. The number and form of interrogatories and depositions will be governed by Federal Rules 30, 31 and 33. The parties do not anticipate it necessary to serve additional Interrogatories or take additional deposition beyond that provided by the Federal Rules. The parties agree that should any party deem it necessary to serve additional Interrogatories or take additional depositions, the parties will first attempt to resolve this issue amicably amongst themselves. Only if this proves unsuccessful will the parties seek guidance from the Court.
- 4. **Joinder of Additional Parties:** The deadline for joinder of parties shall be on or before **February 28, 2022**.
- 5. **Amendment of Pleadings:** The deadline to amend the pleadings shall be on or before **February 28, 2022**.
- 6. **Discovery Closure Deadline:** All pretrial discovery authorized by the Fed. R. of Civ. P. shall be completed on or before **July 1, 2022**. ("Closure Date").
- 7. **Expert Disclosures:**
 - a. Plaintiff's expert designations pursuant to Rule 26(a)(2) shall be provided on or before **July 15, 2022**, with such witnesses being made available for deposition no later than **July 29, 2022**; Defendant's expert designations pursuant to Rule 26 (a)(2) shall be provided by **August 15, 2022**, with such witnesses being made available for deposition no later than **August 30, 2022**; and by any rebuttal expert designations shall be provided by **September 15, 2022**.
- 8. **Dispositive Motions:** Any dispositive motion, except those under Fed. R. Civ. P. Rule 12(h)(2) or (3), **shall** be filed on or before **September 30, 2022**. All motions for summary judgment shall comply with Local Rule 7.1 and 56.1.
- 9. **Daubert Motions:** All motions to strike **expert** designations or preclude expert testimony premised on Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993) shall be filed on or before **September 30, 2022**.
- 10. **Motions in limine** shall be filed twenty-one (21) days prior to the pretrial conference.

11. **Deposition designations** shall be filled fourteen (14) days prior to the pretrial conference.
12. Statement of uncontroverted facts; stipulation as to the admissibility of evidence; witness lists; exhibit lists; list of remaining claims; objections to deposition designation; and, deposition designations by party defending against an affirmative claim shall be filed seven (7) days prior to the pretrial conference.
13. **Pretrial Conference:** The final pretrial conference should be held **October 10, 2022**.
14. **Trial Date:** Parties request a jury trial be set on **November 7, 2022** at **9.00 a.m.** for **3-5 days**, at the United States Courthouse in Kansas City, Missouri.

Date: January 27, 2022

**FOLAND, WICKENS, ROPER,
HOFFER & CRAWFORD, P.C.**

/s/ Karen A. Read

W. James Foland #25022
Karen A. Read #47855
1200 Main St., Suite 2200
Kansas City, Missouri 64105
Telephone: (816) 427-7474
Facsimile: (816) 472-6262
Email: jfoland@fwpcclaw.com

*ATTORNEYS FOR DEFENDANT,
BRANCATO'S MARKET LLC*

STINSON LLP

/s/ Scott Eidson

David R. Barnard, #47127
1201 Walnut Street, Suite 2900
Kansas City, MO 64106
Telephone: (816) 691-2608
Facsimile: (816) 412-1017
David.barnard@stinson.com

Scott Eidson, #57757
7700 Forsyth Blvd., Suite 1100
St. Louis, MO 63105
Telephone: (314) 863-0800
Facsimile: (314) 863-9388
Scott.eidson@stinson.com

ADLER & MANSON, LC
Jim Adler, #26845
9233 Ward Parkway, Suite 240
Kansas City, MO 64114
Telephone: (816) 333-0400
Facsimile: (816) 333-1547

*ATTORNEYS FOR PLAINTIFF,
BRANCATO'S CATERING*